



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: July 29, 2004

COUNCIL DISTRICT: 7

SUBJECT: PDC04-008 PROTEST OF A MITIGATED NEGATIVE DECLARATION FOR A PLANNED DEVELOPMENT REZONING FROM LI – LIGHT INDUSTRIAL TO A(PD) PLANNED DEVELOPMENT (AND SUBSEQUENT PERMITS) TO ALLOW UP TO 70,000 SQUARE FEET OF RETAIL, 50,000 SQUARE FEET OF MEDICAL OFFICE OR AN 80 BED ASSISTED LIVING FACILITY FOR THE ELDERLY, AND UNIMPROVED LAND TO BE DEDICATED FOR PUBLIC PARK USE LOCATED AT THE SOUTHWEST CORNER OF ABORN ROAD AND SILVER CREEK ROAD.

BACKGROUND

This staff report addresses the protest of a Mitigated Negative Declaration for a Planned Development rezoning from LI – Light Industrial to A(PD) Planned Development (and subsequent permits) to allow up to 70,000 square feet of retail, 50,000 square feet of medical office or an 80 bed assisted living facility for the elderly, and unimproved land to be dedicated for public park use located on a 7.5-acre site at the southwest corner of Aborn Road and Silver Creek Road. If the Planning Commission upholds the Director's decision to adopt a Mitigated Negative Declaration, the proposed Planned Development rezoning will be considered by the Commission immediately following this item. A staff report for the Planned Development Zoning will be available prior to the public hearing.

The existing site is vacant. Surrounding land uses consist of single-family houses and industrial uses to the north, commercial uses to the south and east, and a mobile home park to the west.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that a MND may be prepared if the Initial Study identifies a potentially significant effect for which the project proponent has made or agrees to make project revisions that clearly mitigate the effects. Additionally, an MND may not be used if any substantial evidence indicates that the revised project with mitigation may still have a significant effect on the environment.

Mitigated Negative Declaration

On July 9, 2004, the Director of Planning, Building and Code Enforcement (PBCE) completed an Initial Study, and circulated an MND for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available (1) at the Department of Planning, Building and Code Enforcement, (2) on line on the Department's website, (3) at the Main Martin Luther King Jr. Library, and (4) at the Evergreen Branch Library. The public review period began on July 9, 2004, and ended on July 28, 2004.

Letters of Protest

On July 27, 2004, one letter protesting the adequacy of the MND was filed in the Department of Planning, Building and Code Enforcement. The letter was filed by:
Leah Langill, a resident of the area (2951 Vanport Drive)

The issues raised in the letter are discussed and addressed in the Analysis section, below. A copy of the letter is attached to this report.

MND Protest Hearing Procedure

San Jose Municipal Code Section 21.06.030 sets forth the MND protest hearing procedure. If, after reviewing the protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the MND protest to consider all relevant information and materials concerning whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds there is a "fair argument" based on substantial evidence that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director, the Negative Declaration becomes final and no further appeals on the matter may be considered.

ANALYSIS

The following is a response to the concerns raised in the letter of protest noted above.

RESPONSE TO COMMENTS RECEIVED FROM LEAH LANGILL, DATED JULY 21, 2004.

Comment 1: The initial study provides misleading information pertaining to the existing significant traffic experienced in this neighborhood. The initial study uses outdated traffic studies (conducted in 2002) that are not representative of the current conditions.

Response: The traffic study for the IS/MND was prepared in accordance with the City of San Jose's requirements for traffic impact analyses. The traffic study used count data from 2002, as well as counts from 2003 and 2004. The 2002 data was used for regional facilities (e.g., Capitol Expressway) based on a determination by the City and the Santa Clara Valley Transportation Agency (VTA) that this data represented more conservative volumes than more recent, lower counts. The City is a member of the County-wide Congestion Management Program (CMP) and utilizing the 2002 data, the most recent data available, is consistent with direction from the CMP and VTA's professional judgment. The traffic volumes identified in the traffic study, therefore, may be higher than those that actually occur in the area.

Comment 2: Residents living on Vanport Drive, King Court, Tustin Drive, and Monrovia Drive are unable to make left-hand turns onto King Road due to traffic congestion. Residents on Vanport Drive and King Court are unable to turn onto King Road because the left-hand turning lane from King Road onto Aborn Road is often lined up beyond King Court. In addition, the right-hand turning lane (which is a yielded turn) from Aborn Road onto King Road often has vehicles traveling at high speeds around this turn.

Response: The City of San Jose procedures do not typically require evaluation of smaller street operations, such as King Court or Tustin Drive. The proposed project would add a small amount of traffic (less than 25% of the total traffic generated by the development) to King Road. It was estimated that the project would generate 825 daily trips on King Road. This is minimal compared to the overall performance of this street, which can carry 26,000 cars on an average day.

The traffic consultant made further field observations along King Road, between Barberry Lane and Aborn Road, during the PM peak hour on July 28, 2004 to examine existing operations. As was expected, King Road was noted to carry high volumes. However, due to the traffic signals at various intersections along King Road, there were frequent gaps in traffic. Relatively little traffic was observed going in/out at Tustin Drive, King Court, and Vanport Drive. The traffic that used these side streets had to wait for gaps in traffic along King Road; however, wait times were not excessive. In addition, field observations indicated that the queue for the southbound left-turn movement at the intersection of King Road/Aborn Road occasionally spilled out of the left-turn pocket, and occasionally extended to Vanport Drive. However, for the most part all vehicles in the queue would clear during each signal cycle. Although the southbound left-turn queue occasionally blocked the intersection of Vanport Drive, a vehicle at Vanport Drive would have been able to make a left-turn onto King Road after the southbound traffic at King/Aborn

started moving. The signal at this intersection appeared to be very efficient in carrying traffic through the intersection and dissipating queues.

Based on the results of the traffic analysis and recent field observations, the project would not trigger the need for the two improvements at the intersection of King Road/Aborn Road identified in this letter (recommendations #2 and #3). The intersection currently operates at level of service A, which represents optimal operating conditions, and implementation of the project would not cause the LOS to degrade. Although the queues at the southbound left-turn movement may occasionally be long, the signal provides adequate green time to accommodate the majority of vehicles. In addition, the westbound right-turn movement would not be impacted by project traffic (which is making left or through movements to the site), and would not require modification to the existing signal. Such an improvement is outside the scope of this project and would require further evaluation and acceptance by the City Department of Transportation staff.

CONCLUSION

Conditions in the area are typical for arterial streets in San Jose during the peak hours. The concerns raised in this letter are related to existing conditions, and are not associated with the project's impacts or the validity of the traffic analysis. The primary access to the project site would be via Capitol Expressway and Aborn Road, and the project is not expected to significantly increase traffic volumes on King Road north of Aborn.

Based upon a review of the comments above, none of them present substantial evidence of a "fair argument" (according to CEQA Guidelines Sections 15064, 15070 and 15369.5) that the project may result in significant environmental impacts according to the CEQA Guidelines and the City's thresholds of significance. Therefore, as described in the responses above, the Mitigated Negative Declaration meets the requirements of CEQA, and an EIR is not required.

Although the issues raised in this letter do not change the findings in the traffic report or invalidate the conclusions in the IS/MND, the City Department of Transportation - Traffic Calming staff will work with the community to understand the neighborhood's traffic concerns in the King Road/Aborn Road area, and consider alternatives to alleviate these concerns.

RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO ADOPTION

The CEQA Guidelines (Section 15073.5) state that a lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. As used in this section, a "substantial revision" of the negative declaration means:

- 1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- 2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

- 1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- 2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable which are not new avoidable significant effects.
- 3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- 4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The letter protesting the adoption of the Mitigated Negative Declaration does not require "substantial revision" of the Mitigated Negative Declaration, as defined above. The comments do not require recirculation of the Mitigated Negative Declaration because none of the comments discussed above: identifies a new avoidable, significant effect; provides evidence that the project would result in any impact of greater severity than already identified in the Initial Study; or determines that the proposed mitigation measures will not reduce potential environmental effects to a less than significant level. For these reasons, the Mitigated Negative Declaration, as currently written, satisfies the requirements of CEQA and does not require recirculation.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Mitigated Negative Declaration for the proposed project; (2) order revision, and if required, recirculation of the Mitigated Negative Declaration; or (3) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Stephen M. Haase, AICP, Director
Planning, Building and Code Enforcement

Attachments:
Letter of protest from Leah Langill, dated July 21, 2004